UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS, and ROBERT M. FAIRFAX,

Plaintiffs

vs.

THE CHICAGO HOUSING AUTHORITY, a Corporation, and ALVIN E. ROSE, Executive Director,

Defendants

CASE NO. 66C1459

REPLY MEMORANDUM IN SUPPORT OF MOTION OF CHICAGO HOUSING AUTHORITY, A CORPORATION, AND ALVIN E. ROSE, EXECUTIVE DIRECTOR, PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULES 12 AND 56, TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Plaintiffs Lack Standing to Sue

The complaint in this suit was filed by six persons who make the very serious charge that defendant Chicago Housing Authority ("CHA") has since 1950 carried on a housing site selection program, the effect of which has been to discriminate against Negroes by avoiding the placement of Negro families in white or mixed neighborhoods. The suit seeks to enjoin CHA from proceeding with a $54 million public housing program on 21 sites intended to provide needed housing for a part at least of the approximately 8,500 families now on CHA's waiting list for regular family public housing.

Defendant CHA, a municipal corporation created by Illinois

statute, is not above the law. It hardly needs saying that should it engage in any building program which is discriminatory in violation of constitutional guarantees, CHA should be amenable to suit. But any such suit must, in order to be justiciable, present an actual case or controversy (U.S. Const. Art. III, Sec. 2) between real parties having real adverse legal interests admitting of relief. Defendants by their motion and supporting affidavits deny that this suit presents an actual case or controversy, by challenging the standing of any of these six persons to bring this action (Defendants' Memorandum In Support of Motion, pages 2-7).

Endeavoring to meet this challenge, plaintiffs have filed a number of counteraffidavits in opposition to defendants' motion, and because of the U.S. census tract data therein defendants file with this reply memorandum a supplemental affidavit of Harry J. Schneider.

Before making reply to the argument in plaintiffs' memorandum in opposition to defendants' motion regarding standing to sue (Plaintiffs' Memorandum, pages 12-29), defendants believe it may be helpful to the Court to undertake to summarize what is shown by the affidavits, counteraffidavits and supplemental affidavit filed in support of and in opposition to defendants' motion.

The ultimate facts disclosed by defendants' affidavits and supplemental affidavit in support of their motion, and not contradicted by anything contained in plaintiffs' counteraffidavits, are these:

(1) Of the six plaintiffs, none are eligible applicants on CHA's waiting list for public housing; four are CHA tenants, and the remaining two are CHA registrants who are ineligible for public housing.

All plaintiffs other than Eva Rodgers and James Rodgers are CHA tenants, not applicants. The Rodgers registered for public housing in February, 1966, but are ineligible due to a rent delinquency going back to an earlier CHA tenancy (Defendants' Memorandum, pages 6 and 7). In other words, not one of these six plaintiffs can reasonably claim that he or she will be personally affected in any way by the building program of which they complain (unless it be in some "psychological" sense as plaintiffs apparently argue).

(2) At all pertinent times the CHA owned and operated public housing projects in other than Negro neighborhoods where any of these plaintiffs could have been housed had they so requested.

Three of the four tenant plaintiffs (plaintiffs Gautreaux, Jones and Crenchaw) registered for public housing in 1953 and 1955, and plaintiff Eva Rodgers became a CHA tenant in 1955. (She vacated her apartment in 1958, owing unpaid rent.) The Schneider and Humphrey affidavits filed by defendants in support of their motion establish that during these years CHA owned and operated a number of public housing projects in other than Negro neighborhoods where any of these plaintiffs could have been housed had they so requested.

Plaintiffs have filed counteraffidavits (affidavits of Philip M. Hauser, Harold M. Baron, Tammaara D. Tabb, J. S.

Fuerst and Kale A. Williams, Jr.) which undertake to dispute this proposition in two respects:

(a) by maintaining that defendants have unreasonably defined the term "neighborhood" for purpose of their motion, in taking as the relevant geographical area the larger "community area" instead of the smaller U.S. census tract or tracts in which each public housing project is situated; and

(b) by maintaining that at the time these plaintiffs registered for public housing, it was well known that four of CHA's public housing projects located in white or substantially all white neighborhoods were closed to Negro occupancy, namely, the projects known as Trumbull Park Homes, Lathrop Homes, Bridgeport Homes and Lawndale Gardens.

The question of community area versus U.S. census tract as a proper geographical measure of "neighborhood" is discussed hereinafter (pages 25-29). It will suffice to say at this point that, even taking plaintiffs' U.S. census tract approach for the sake of argument, the fact would still remain that even on that basis in 1953 and 1955 the CHA owned and operated a number of public housing projects in other than Negro neighborhoods where plaintiffs Gautreaux, Jones, Crenchaw and Rodgers could have been housed had they so requested.

Apart from the four projects complained of by plaintiffs, there were in 1953 no less than seven other projects (in addition to Altgeld Gardens) operated by CHA in locations other than in Negro neighborhoods where Negroes were then residing in substantial numbers (Schneider Supplemental Affidavit attached to this reply).

These seven projects were Jane Addams Homes, Cabrini Homes, Racine Courts, Ogden Courts, Harrison Courts, Maplewood Courts and Archer Courts.

Similarly, there were in 1955 no less than eleven projects (in addition to Altgeld Gardens) operated by CHA in locations other than in Negro neighborhoods where Negroes were then residing in substantial numbers (Schneider Supplemental Affidavit). These included the seven projects already referred to, plus Lathrop Homes, Trumbull Park Homes, Olander Homes and Leclaire Courts Extension (the last two of which had not been completed in 1953).

Regarding plaintiff Fairfax:

In 1945, the year during which Fairfax became a CHA tenant at Altgeld Gardens, the percentage of Negro population in the pertinent census tract was zero, according to the 1940 U.S. Census. By the time of the 1950 U.S. Census this percentage had risen to 84 per cent, solely, however, because of the development by CHA of the Altgeld Gardens project and its occupancy by Negroes; the communities surrounding Altgeld Gardens (Pullman, South Deering, West Pullman, Hegewich) were in 1945 and are now approximately 99 per cent white (original Schneider Affidavit, page 4). Moreover, there were in 1945 two projects other than Altgeld Gardens operated by CHA in locations other than in Negro neighborhoods where Negroes then resided and where plaintiff could have been housed had he so requested. (Schneider Supplemental Affidavit). These projects were Jane Addams Homes and Cabrini Homes.

(3) Plaintiffs either made no such request for public

housing in any project in other than a Negro neighborhood, or were housed as requested.

The facts, all supported by the original Schneider affidavit, are set out and discussed in defendants' memorandum in support of its motion at pages 4-7. Plaintiffs' counteraffidavits neither add to nor detract anything in substance from these facts, merely alleging certain "beliefs" of the plaintiffs regarding supposed policies of CHA, which beliefs are, defendants submit, wholly irrelevant to this motion.

Plaintiff Dorothy Gautreaux, in undertaking to explain why in 1953 she indicated a preference for housing in a project in a neighborhood approximately 98 per cent Negro, and why, when later applying for a transfer, she made no request for a transfer to a project in a white or a mixed neighborhood, states in her affidavit that she "believed" that because of supposed CHA policies she could not be admitted to any project in a white or a mixed neighborhood (Gautreaux affidavit, pages 2, 3). She does not claim ever to have so much as requested housing in any such neighborhood.

In registering for public housing in 1955 plaintiff Odell Jones said that he wanted housing in Dearborn Homes, which was then in an almost entirely Negro neighborhood. He was in fact housed in Henry Horner Homes, located in a neighborhood then approximately 54 per cent Negro. Twice -- in 1963 and in 1966 -- he requested transfers, the first time indicating no preference for any particular location, and the second time requesting transfer to Washington Park Homes, located in a neighborhood

approximately 99 per cent Negro. Again, this plaintiff undertakes to explain all this away by stating that he "believed" that the CHA would not house him in any project in a white neighborhood (Jones affidavit, pages 2, 3). Again, there is no claim whatsoever that this plaintiff ever so much as requested housing in any project in such a neighborhood.

Similarly, when plaintiff Doreatha Crenchaw registered in 1953, she indicated a preference for Ida B. Wells Homes, a project in a neighborhood then approximately 95 per cent Negro. She was housed in 1955 in Henry Horner Homes, located in a neighborhood then approximately 54 per cent Negro. Subsequently, she requested a transfer to Washington Park Homes, located as already indicated in a neighborhood approximately 99 per cent Negro. Again, this plaintiff undertakes to explain all this away by stating that it was her "belief" that CHA would not house her in a project in a white or a mixed neighborhood. Again, this plaintiff makes no claim whatever that she ever so much as requested such housing.

Plaintiff Robert Fairfax applied for residence in Altgeld Gardens in 1945. Although he does not mention the fact in his own affidavit, the fact is that he was then employed by CHA at that project as a janitor (original Schneider Affidavit, page 4), and that single fact amply explains why he desired housing there instead of somewhere else. Moreover, as already noted, Altgeld Gardens was then and is now surrounded by communities which are almost entirely white, although the U.S. census tract figures may not reflect this fact because

of the census tract being limited in area to the project itself which has always been largely Negro in occupancy. In any event, it is again the fact in the case of this plaintiff that there is no claim whatever that when he applied for public housing he so much as requested housing anywhere other than in Altgeld Gardens. Again, he undertakes to explain this away by stating merely what he "believed" regarding CHA policy.

Plaintiffs Eva Rodgers and James Rodgers, as already noted, are not CHA tenants and are not even eligible for tenancy due to rent delinquency arising out of a previous tenancy. Again, there is no claim asserted on behalf of either of them that they at any time (including at the time of their registration in February, 1966) so much as requested public housing in any project in a white or mixed neighborhood, and indeed no affidavit whatsoever has been filed by or in respect of them undertaking to support their claimed standing to sue.

In addition to the six plaintiffs named in the complaint now on file, plaintiffs have moved the Court under Federal Rule 21 for leave to amend the complaint by adding as a party plaintiff one Jimmie Jones (who has joined in that motion). This motion is an effort on the part of the plaintiffs to include as a party plaintiff, in addition to the four CHA tenants, some one person who is an eligible applicant for public housing, plaintiffs Eva Rodgers and James Rodgers being disqualified by reason of rent delinquency. No affidavit

whatever has been offered by plaintiffs or said Jimmie Jones in support of this motion, the motion merely stating (by one of the attorneys for plaintiffs) that said Jimmie Jones "has heretofore filed ... a written application for and is eligible to be housed in projects operated by the defendants." Again, there is no claim whatever that said Jimmie Jones has ever so much as requested public housing in any project in a white or mixed neighborhood; indeed, in her case, there is not even so much as a statement as to what her "beliefs" may have been in respect of supposed CHA policies in this regard.

Plaintiffs undertake to argue (Plaintiffs' Memorandum, pages 12-19) that, quite apart from what plaintiffs characterize as the "factual disputes" (Plaintiffs' Memorandum, page 12), defendants' standing to sue argument is incorrect as a matter of law. In their memorandum plaintiffs place great reliance upon Singleton v. Board of Commissioners, 356 F. 2d 771 (C.A. 5th, 1966), and also upon Bailey v. Patterson, 369 U.S. 31 (1962), the latter being a case misread by defendants in the opinion of plaintiffs.

Singleton v. Board of Commissioners was a suit brought by four Negro juveniles, former inmates of a Florida reform school, seeking to desegregate said school. Their standing to sue was challenged on the ground that they were no longer inmates, but the Court upheld their standing by reason of the fact that segregation in the Florida reform schools was imposed by statute, that these plaintiffs remained subject to the jurisdiction of the Florida juvenile courts until age 21, and moreover their

release from the reform school was subject to probationary provisions imposed by the Board; the Court of Appeals in its opinion relying upon what it characterized as "the general standing requirement in [desegregation] cases ... that the plaintiffs must show past use of the facilities, where feasible, and a right to or a reasonable possibility of future use" (356 F. 2d at page 773), citing a number of cases including Bailey v. Patterson. The cases cited are clearly inapposite or support the argument of defendants not plaintiffs.

Of these cases, Bailey v. Patterson (in part), Evers v. Dwyer, 358 U.S. 202 (1958), Henderson v. United States, 339 U.S. 816 (1950), Mitchell v. United States, 313 U.S. 80 (1941), and Morrison v. Davis, 252 F. 2d 102 (C.A. 5th 1958) are all railroad or bus cases, and no reasonable analogy suggests itself between such cases, where one is dealing with public transportation open to all on a continuing day to day basis and where past, present and future use of the facilities is subject solely to the needs and desires, indeed whims, of the individual patrons -- in short, is a matter largely within their control -- and in the case of a public housing authority and public housing facilities, where past, present and future use of the facilities is not like getting on or off a train or a bus but is a matter -- as to qualification for such housing, availability of space and the like -- largely beyond the control of individuals such as plaintiffs and where, to the extent plaintiffs may exercise a choice of use they have in fact long ago opted for the very kind of facilities that have been afforded them.

To the extent that it is more than a public transportation case, Bailey v. Patterson supports the position of defendants and not plaintiffs. This suit brought by Negroes in Mississippi also sought, as noted in defendants' original memorandum (page 3), to enjoin prosecutions under Mississippi's "breach of peace" statutes. The Supreme Court held that they had no standing in this regard, "since they do not allege that they have been prosecuted or threatened with prosecution under them" (369 U.S. at pages 32-33). This is the holding relevant to the present case. Assuming arguendo that the sites selected by CHA and under attack in this action had been selected in a discriminatory way, none of the plaintiffs have alleged that such site selection affects them personally in any way.

The two remaining cases cited in Singleton v. Board of Commissioners -- both "non-transportation" cases -- are, defendants submit, more nearly apposite to the present case and clearly support the position of defendants and not plaintiffs. The more recent of these two cases is Anderson v. City of Albany, 321 F. 2d 649 (C.A. 5th 1963), a case in which four Negro residents of Albany, Georgia, on their own behalf and as members of a purported class, sought to enjoin enforcement of certain racial segregation practices in respect of the public recreational, library and auditorium facilities of the city. The defendant challenged their standing to sue on their own behalf and their standing to represent the purported class. The evidence disclosed that plaintiffs and many other Negroes in Albany had formed a civil rights movement called the "Albany Movement" aimed at bringing an end to racial discrimination in

the city; that at least two of the individual plaintiffs, all of whom were leaders in this movement, had met with the mayor on at least one occasion prior to filing the suit, requesting him to take action to desegregate all public facilities; and that plaintiffs had been leaders in presenting other demands to city officials, both oral and in the form of written petitions. On the basis of this showing the Court of Appeals properly concluded that the plaintiffs did in fact have standing to sue on their own behalf and as members of a class, saying (321 F. 2d at page 652):

> "Assuming, as we do for the purpose of testing the action of the trial court here, that in order for there to be a justiciable controversy there must be a demand that there be an end of the racially discriminatory practices made by the class or some members of the class of which the named plaintiffs are members, there can be no doubt in the light of the testimony of the Mayor of the City of Albany that such demand was, in fact, made by at least two of the plaintiffs in this suit. Moreover, the record is replete with testimony that over an extended period constant picketing and demonstrations carried on by these named plaintiffs and many others repeatedly made the same demands on the city officials, who reacted uniformly by arresting these plaintiffs and many others while thus engaged." (emphasis added)

Not one particle of what the Anderson plaintiffs did, over an extended period of time prior to the filing of their suit, is claimed to have been done by any one of the plaintiffs in the present action. Not one of these plaintiffs so much as claims to have made any demand or request whatsoever, when applying for public housing, to be housed in a white or mixed neighborhood (with the single exception of plaintiff Fairfax who, by applying at Altgeld Gardens, evinced an interest in living in a white community and who was in fact housed exactly as requested).

The remaining case cited in Singleton is Rackley v. Board of Orangeburg Regional Hospital, 310 F. 2d 141 (C.A. 4th 1962), a case which also squarely supports the position of defendants and not plaintiffs. This was a suit by a Negro mother and daughter seeking to restrain the hospital from maintaining separate facilities for white and Negro. Although apparently no direct challenge was made upon their standing to sue, the principal contention being the propriety of the suit as a purported class action, the opinion of the Court of Appeals clearly and properly proceeds on the assumption that these plaintiffs did in fact have standing to sue, the basis being that they had not passively accepted any separate or special treatment at the hospital but on the contrary had affirmatively demanded non-discriminatory treatment. Thus, when her daughter was hurt in an accident and taken to the hospital's emergency room, the mother was first directed to a white waiting room and then, without explanation, shown to another waiting room, the Negro waiting room. She refused to enter this second room but returned and took up her seat in the white waiting room. Only after the Chief of Police appeared and threatened her with arrest did she leave that waiting room and step into the hospital corridor and wait for her daughter. Moreover, two weeks later, when the mother and daughter returned to the hospital for removal of a cast, the mother again entered the white waiting room and declined to move when told to do so. After her daughter joined her the two of them continued to sit in the white waiting room, and on their refusal to leave a police officer appeared and

placed the mother under arrest. Again, these plaintiffs clearly evinced by their words and actions a direct personal interest in and personal opposition to the hospital policies and practices of which they complained. Not one of the plaintiffs in the present action can say the same or anything like the same.

Plaintiffs in their memorandum (pages 15-17) also seek support for standing to sue from three school desegregation cases, Potts v. Flax, 313 F. 2d 284 (C.A. 5th 1963), Orleans Parish School Board v. Bush, 242 F. 2d 156 (C.A. 5th 1957) and Charlottesville School Board v. Allen, 240 F. 2d 59 (C.A. 4th 1956), cert. den. 353 U.S. 910 (1957). The school desegregation cases are no more apposite than the railroad and bus transportation cases -- as in the case of public transportation facilities, public school facilities are open to all children of residents of the school district on a continuing basis -- in fact, attendance is compulsory as a rule -- and past, present and future use of such facilities or of particular facilities is determined generally by where they live, which is their personal matter and not that of the school board. Moreover, to the extent such cases might in any way be deemed apposite, they furnish very weak support for plaintiffs' position. Thus, in Potts v. Flax the defendant school board of Fort Worth, Texas not only openly acknowledged the maintenance of a racially segregated school system, but did not even challenge the standing of the plaintiffs to sue for the relief sought, merely questioning their right to bring a class suit, and even as to the limited question of class suit the Court of Appeals

said in its opinion (313 F. 2d at page 288):

> "At the outset we are not at all certain that the right of these plaintiffs to bring the suit on behalf of all Negro children in Fort Worth was really disputed."

And in Orleans Parish School Board v. Bush, where the defendant school board moved to dismiss the complaint on the ground that plaintiffs lacked standing because they had not pursued their administrative remedies for relief prior to the filing of the suit, the court determined that the plaintiffs had in fact done everything they were required to do administratively under Louisiana laws in effect at the time of the filing and therefore had standing to sue. Charlottesville School Board v. Allen was also a case where the defense was raised that plaintiffs had failed to exhaust their administrative remedies. The court held that the plaintiffs, Negro school children in Charlottesville, having in fact made application to the school board without result, for admission to the public schools on a non-segregated basis, had properly exhausted their administrative remedies prior to filing suit. Again, the plaintiffs in these suits, by exhausting their administrative remedies, clearly evinced by their words and actions a direct personal interest in and personal opposition to the school board policies and practices of which they complained. Not one of the plaintiffs in the present action can say the same or anything like the same.

Plaintiffs' Class Action Argument

Plaintiffs have devoted a great deal of their memorandum (pages 30-43) attempting to support the proposition that this action is a proper class action. The answer to all this, defendants submit, is very simple. Plaintiffs cannot represent a class of whom they are not a part, Bailey v. Patterson, 369 U.S. 31, 33 (1962) (and additional cases cited in defendants' original memorandum, page 8). Federal Rule 23(a) says as much

by expressly providing that one of the prerequisites to a class action is that "the claims... of the representative parties [must be] typical of the claims... of the class..." Here, plaintiffs who are the purported representative parties do not in fact have any claim at all in their individual capacities, therefore are wholly precluded from qualifying as representative parties under Federal Rule 23(a).

Put another way, the class -- if there is a class -- would properly be described as Negro public housing tenants and/or applicants eligible for public housing who have been or may be adversely affected by the alleged discriminatory policies of CHA. Those Negroes, such as plaintiffs, who have not been or could not under any reasonably foreseeable set of circumstances be adversely affected by any such policy would not be proper members of the class. Cf. Anderson v. City of Albany, 321 F. 2d 649 at page 653, where the Court of Appeals described the class of Negro citizens represented by the plaintiffs in a suit for desegregation of public facilities as persons "who were adversely affected by the State's policy of racial segregation" (emphasis added).

Plaintiffs undertake to support the appropriateness of the present action as a class action by reliance upon Potts v. Flax, one of the school desegregation cases already discussed in this reply memorandum. There, a policy of school segregation was admitted and the Court of Appeals, as already noted, stated: "At the outset we are not at all certain that the right of these plaintiffs to bring the suit on behalf of

all Negro children in Fort Worth was really disputed" (313 F. 2d at page 288). Moreover, the court, in allowing the suit as a class suit, took special note of the fact that

> "there was not the slightest suggestion either on the trial (or since) that within that large mass [of Negro students in Fort Worth] there was any substantial conflict either in interest or in the legal positions to be advanced." (313 F. 2d at page 289)

Here, within the large number of public housing tenants and applicants for public housing there is clearly a substantial conflict of interest not present in Potts v. Flax. The interest of tenants presently housed in safe, decent and sanitary housing is substantially different from that of applicants on a long waiting list whose undoubted main concern (as in the case of plaintiffs Gautreaux, Jones and Crenchaw, as acknowledged in their own affidavits) is their desperate need for such housing at a rent they can pay (and not for housing in any particular neighborhood, whether white, Negro or in between).

Plaintiffs' Assertion of Legal Rights Under the Civil Rights Act of 1964

Plaintiffs' argument in support of Counts II and IV of their complaint as stating a claim under Section 601 of Title VI of the Civil Rights Act of 1964 (42 USC, Sec. 2000d) wholly misconstrues the purposes of Title VI and therefore the construction to be given its various provisions. Section 601, which provides that no person shall on grounds of race, color or racial origin be subjected to discrimination under any program or activity receiving federal financial assistance, is (insofar at least as any such program or activity is carried on

by a local governmental agency such as CHA) nothing more nor less than a restatement of sound constitutional doctrine long antedating the Civil Rights Act of 1964. In and of itself it gives no additional rights or remedies to anyone.

It is the sections following Section 601 of Title VI that add something new to the law, and that "something new" is a very specific procedure by which the federal government is charged with determining whether or not any "recipient" of federal financial assistance is in compliance with the non-discrimination standard of Section 601, and affording judicial review to any such recipient in the event of a termination of such federal financial assistance, 42 USC, Secs. 2000d-1, 2000d-2. That the term "recipient" means the local body to which the federal funds are paid, and not the ultimate individual beneficiaries of the local program or activity, is clear from the act itself (42 USC, Sec. 2000d-1) and its legislative history (cf. 1964 U.S. Code Cong. and Admin. News, pages 2425-26, House Report No. 914, Additional Views of Hon. George Meader, and 1964 U.S. Code Cong. and Admin. News, page 2512, Additional Views on H.R. 7152 of Hon. William M. McCulloch, et al., regarding Title VI). What Congress sought to guard against, in placing a very specific "watchdog" obligation on federal agencies, is obvious, namely, the risk of leaving local governmental bodies at the mercies of some federal bureaucrat whose actions in terminating federal assistance to one local agency but not to another could be an arbitrary or discriminatory act pure and simple. Congress desired to guard against this possibility, by giving reasonable opportunity to any local body cut off from federal funds to

appeal, not only administratively but also in the courts.

Green Street Association v. Daley, 250 F. Supp. 139 (N.D. Ill. E.D. 1966), now on appeal, is a case squarely supporting the position of defendants in respect of the inapplicability of Section 601 of the Civil Rights Act of 1964 to the present action. In the Green Street case the plaintiffs sought to enjoin further action by defendants, which included local and federal governmental agencies, regarding the proposed federally assisted urban renewal project in the Englewood area of Chicago. Count I named as defendants the local defendants only, and relied in part on rights allegedly secured by Section 601. Judge Robson, sustaining a motion to dismiss all counts including Count I, concluded in part as follows (250 F. Supp. at page 146):

> "The court agrees that [Title VI of] the Civil Rights Act of 1964 was intended to prohibit discrimination against recipients of federal funds, and plaintiffs are not such recipients. The Civil Rights Act of 1964, therefore, confers no legal or other rights on plaintiffs apart from the public as a whole."

Plaintiffs in their memorandum (page 56) agree that Judge Robson's holding in Green Street Association v. Daley is to the effect that Title VI of the Civil Rights Act of 1964 was intended to prohibit discrimination against public agencies, but submit that the holding is therefore erroneous because "the intent of the Civil Rights Act of 1964 was to prohibit discrimination against Negroes." Judge Robson's holding is not erroneous. Plaintiffs mistake completely the purpose of the one remedy which is afforded by Title VI, namely, a review procedure which can be invoked by the direct recipients of federal financial assistance in order to protect

against arbitrary or discriminatory withholding of federal assistance from some local agency, on charges of misuse of federal funds.

It is jejune to say, as plaintiffs do (Plaintiffs' Memorandum, page 57), that the Civil Rights Act of 1964 was intended to prohibit discrimination against Negroes. This is, of course, true. The question raised by Counts II and IV, however, is the narrower question whether these plaintiffs are afforded any remedy by reason of anything contained in Title VI. Defendants submit that these plaintiffs are not afforded any remedy at all by Title VI (except indirectly in the respect that Title VI undertakes to guard against discriminatory practices by local agencies by providing a federal "watchdog"). Nor is this a harsh conclusion to reach, as plaintiffs seem to infer. The claims they seek to assert under Counts II and IV are no broader than the claims they seek to assert under Counts I and III, neither of which counts depends in any way on anything contained in the Civil Rights Act of 1964. In short, as stated in defendants' original memorandum at pages 12-13:

> "If these plaintiffs have any standing to complain of any acts of defendants, their rights and remedies if any are encompassed in the allegations of Count I, and Counts II and IV [the counts relying upon Title VI of the Civil Rights Act of 1964] add nothing to Count I but on the contrary are improperly brought."

Plaintiffs Fail in Counts III and IV to Allege Any Deliberate or Purposeful Conduct by Defendants

There is one basic and serious flaw in plaintiffs' argument

throughout their memorandum, but especially in that part dealing with Counts III and IV of their complaint, which make no allegation of deliberate or purposeful conduct on the part of defendants (plaintiffs' memorandum, pages 60-69). This is, defendants respectfully submit, plaintiffs' notion that public housing authorities and public school boards are pretty much one and the same thing. Thus, in support of Counts III and IV they rely in their memorandum on such school desegregation cases as Branche v. Board of Education of Hempstead, 204 F. Supp. 150 (E.D.N.Y. 1962) (plaintiffs' memorandum, pages 61-62) for such statements as this:

> "That [segregated education] is not coerced by direct action by an arm of the state cannot, alone, be decisive of the issue of deprivation of constitutional right." (204 F. Supp. at page 153)

and then leap to the conclusion, that just as a school board may be required to re-draw school attendance boundaries which, for one reason or another, have become unreasonable with the passage of time, so may a public housing authority be required to limit its site selection program to certain areas of the city, presumably all white or at least less than substantially all Negro, because of patterns of residential segregation which may for one reason or another have developed over the years.

exactly so

Branche v. Board of Education of Hempstead was carefully considered by Judge Marovitz in his opinion in Webb v. Board of Education, 223 F. Supp. 466 (N.D. Ill. E.D. 1963), wherein he stated (223 F. Supp. at pages 468-69):

> "Branche v. Board of Education, 204 F. Supp. 150 (E.D.N.Y. 1962) dealt with a neighborhood school policy in Hempstead, N. Y. Defendant's motion for summary

judgment was denied, but the case was subsequently suspended. Branche can be read to say that the mere act of requiring attendance in a segregated school, determined by numbers, constitutes State action under the Fourteenth Amendment. That is, that all schools having a high percentage of one race are presumptively unconstitutional. To take this construction would seem illogical, as residential segregation may very often lead to a predominantly Negro school district, even when that district is drawn with reasonable boundaries. A more intelligent approach to Branche would lead to the conclusion that passive gerrymandering may create an unconstitutionally segregated school. However, there must be some affirmative action of 'segregating', to violate the Fourteenth Amendment, even if it is only the passive refusal to redistrict unreasonable boundaries. Mere residential segregation is not enough."

To argue, as the plaintiffs apparently do, that the placement of public housing projects in Negro neighborhoods rather than in white neighborhoods is the equivalent, for legal purposes, of "the passive refusal [of a school board] to redistrict unreasonable boundaries" is absurd. The Chicago Housing Authority is not a school board. It is a special municipal corporation created under a special Illinois statute, with its purposes being clearly stated as follows (Ill. Rev. Stat., Chap. 67 1/2, Sec. 2):

> "[to] engage in low-rent housing and slum clearance projects, and undertake such land assembly, clearance, rehabilitation, development and redevelopment projects as will tend to relieve the shortage of decent, safe, and sanitary dwellings; ... to acquire and dispose of improved or unimproved property, to remove unsanitary or substandard conditions, to construct and operate housing accommodations, to regulate the maintenance of housing projects and to borrow, expend, loan, invest, and repay monies for the purposes herein set forth..."

To accomplish these goals or even to make headway on their accomplishment, the Chicago Housing Authority must of necessity, in carrying forward its public housing program, concentrate on those areas of the city where

there are slums, where there are unsanitary and sub-standard housing conditions, where the land necessary for development can be obtained and developed at reasonable cost -- the CHA cannot expect to accomplish these goals by spending its money for land in, say, Lincolnwood, Beverly Hills or on Lake Shore Drive. In attempting to carry over the language in some of the school cases cited by plaintiffs to the CHA situation, plaintiffs blithely ignore the basic purposes for which CHA has been established and charge it with some sort of affirmative duty to locate projects in white neighborhoods the pursuit of which would make it difficult if indeed not impossible for CHA to achieve most of the basic goals for which it was in fact originally established. To apply the dictum of some of these cases cited by plaintiffs to the CHA situation would be to make a mockery of the Illinois law under which CHA is established.

The relevant language of Judge Marovitz in the Webb case remains especially pertinent (223 F. Supp. at page 468):

> "It would therefore appear that the only basis for equitable relief in this case must be found in the form of an intentional design on Defendants' behalf to maintain segregation in the public schools. De facto segregation resulting from the implementation of a neighborhood school policy, or residential segregation is not enough." (emphasis added)

Plaintiffs in their memorandum (page 67) state: "At the present state of this case ... Counts III and IV may solidly rest on the school segregation cases." Their memorandum then goes on to state (pages 67-68):

> "As already noted, however, the CHA's conduct is not comparable to that of the passive school board

Written Note, line 1, page 23:

School boards have made similar arguments, e.g. the costs of bussing, disruption of neighborhood patterns, etc. adversely affecting education

> confronted with residential segregation. Whatever may be one's views of the constitutional duties of such a board, the CHA plainly has a burden of justifying its self-created 16-year pattern of affirmative site selection."

This statement is grossly in error. The CHA clearly has no such burden of justifying its affirmative site selection. It bears repeating that CHA is charged by Illinois law with the obligation of pursuing certain goals in the carrying forward of its public housing program -- goals of slum clearance, elimination of unsanitary and sub-standard housing conditions, rehabilitation and redevelopment of slum and blighted areas, and the conservation of existing housing -- and a presumption of regularity supports all official acts of CHA and its commissioner members (see cases cited at page 15 of defendants' original memorandum). The burden, therefore, is on the other foot. The burden is upon plaintiffs and not defendants, and the burden is that of proving that CHA's site selection program has not been reasonably related to accomplishment of the statutory goals for which it was established by the Illinois legislature, but in fact has been intentionally designed to promote racial segregation. The basic and serious flaw in plaintiffs' argument, once again, is their notion that the CHA is more or less the same kind of body as a school board, and in making this argument plaintiffs wholly ignore most if not all of the special statutory purposes for which CHA was originally created and which must and do govern and guide all of its programs and policies.

There is No Genuine Issue as to Any Material Fact

Defendants' original memorandum (pages 19-23) shows clearly, defendants believe, why there can be no genuine issue as to any material fact in respect of the crucial allegations of the complaint -- the allegations that since 1950 substantially all of the sites selected for CHA for regular family housing projects have been in Negro neighborhoods and within the areas known as the Negro ghetto (Complaint, paragraph 12 of Counts I, II, III and IV, paragraphs 16 and 17 of Counts III and IV). The tables attached to Mr. Humphrey's affidavit in support of defendants' motion effectively refute these allegations. Mr. Humphrey's affidavit and the attached exhibits establish that since 1950 CHA has not confined its selection of sites for regular family housing to Negro neighborhoods; that sites of 11 projects out of a total of 23 projects acquired since 1950 have been in neighborhoods where the Negro population did not exceed 53.8% in any case and in fact averaged only 38.1%. For purposes of delineating neighborhoods, Mr. Humphrey relied on the community area concept which divides the city into 75 community areas, as designated by the Chicago Community Inventory of the University of Chicago.

Plaintiffs argue, however, that the Humphrey affidavit is rendered irrelevant by the counteraffidavits of Professor Philip Hauser of the University of Chicago and Dr. Harold M. Baron of the Chicago Urban League. Professor Hauser's affidavit asserts that the "community area" figures used by Mr. Humphrey to establish the racial composition of particular neighborhoods are without significance, that "the racial composition of the relevant local areas or neighborhoods, within which are located the public housing projects referred to, may best be determined by using the individual United States census tract or tracts within which such projects

are located." (The U.S. Bureau of the Census has divided the city into approximately 935 census tracts.) Proceeding on this theory, Dr. Baron in his affidavit gives such census tract information on a project-by-project basis, showing the percentage of Negro population in each census tract for the years 1950 and 1960.

There is no inflexible law laid down from on high that tells with absolute and unvarying certainty exactly how every large city is best divided up into so-called "neighborhoods". There is bound to be an element of arbitrariness in almost any approach one might take. The question boils down to whether plaintiffs have created a genuine issue of material fact, by looking at U.S. census tracts as if they were neighborhoods and assembling figures on that basis, as an alternative to the community area analysis of defendants.

Professor Hauser states in his affidavit that "...community areas [75 in number] are too large, too populous and include too many disparate local areas or neighborhoods to constitute an appropriate unit for determining the racial composition of the relevant local area or neighborhood within which are located the public housing projects referred to..." One of the difficulties with U.S. census tracts (935 in number) is that just the opposite may be said of them. They are often too small to "constitute an appropriate unit for determining the racial composition of the relevant local area...", especially where the very introduction into that area of a public housing project -- which in many cases in Chicago has been the only local housing available to Negroes -- will so heavily weight the statistics as to render them meaningless. A good example is Altgeld Gardens. Here, Dr. Baron's own figures show zero per cent Negro population in the local U.S. census tract in 1940, three years prior to CHA acquisition of the Altgeld Gardens site. For the year 1950, some five years after completion of Altgeld Gardens, his figures show 84 per cent Negro population in the census tract. Nothing happened between

1940 and 1950 in the surrounding communities, which were then and are now almost entirely white in racial composition. The only thing that did happen was that CHA built a project in the area and made it possible for Negroes to live there. As a result defendants now find that, because the U.S. census tract is confined to the project itself, plaintiffs and Professor Hauser and Dr. Baron characterize the project as one in a Negro neighborhood. This is an approach to statistics that says in effect that CHA is damned if it does and damned if it doesn't.

Underlying such oddities in given instances are the limited and special purposes of the establishment and maintenance of U.S. census tracts, which make it highly questionable whether they can serve any valid purpose at all for purposes of this action. Census tracts are nothing more nor less than "small areas into which large cities and adjacent areas have been divided for statistical purposes." U.S. Bureau of the Census, U.S. Censuses of Population and Housing, 1960, Census Tracts, Final Report PHC (1) - 26, page 1. Although census tract boundaries may have been generally designed originally to reflect relative uniformity in respect of population characteristics, economic status and living conditions, they were also established with the intention of being maintained over a long period of time so as to permit statistical comparisons to be made from census to census. It is a mere matter of chance, therefore, whether particular census tracts now have any relation whatever to any common sense concept of

"neighborhood". The principle of permanent boundaries is paramount, and takes priority over any effort to maintain boundaries reflecting any attributes of neighborhoods. Census Tracts, supra at page 2.

The concept of "community areas" within the city of Chicago arose out of work carried on by the Social Science Research Committee of the University of Chicago, Professor Hauser's own university. The best statement perhaps of why defendants have used this concept in reviewing the site selection program of CHA appears, in fact, in the Local Community Fact Book for Chicago, 1950, published by the university in 1953 and edited by Professor Hauser, this statement being as follows (page xi):

> "For more than a generation various agencies within Chicago have viewed the city as comprising 75 Local Community Areas. These areas were delineated through the work of the Social Science Research Committee of the University of Chicago, building upon the years of research activity of its predecessor, the Local Community Research Committee, with the cooperation and concerted effort of many local agencies and the United States Bureau of the Census. The boundaries of the 75 Community Areas within the city were based on several considerations, chief among which were: (1) the settlement, growth and history of the area; (2) local identification with the area; (3) the local trade area; (4) distribution of membership of local institutions; and (5) natural and artificial barriers such as the Chicago River and its branches, railroad lines, local transportation systems, and parks and boulevards. The actual boundaries drawn for each Community Area were necessarily a compromise of these several factors, and involved also consideration of the tabulation requirements of the U.S. Bureau of the Census which tended to restrict the total number of such areas. Moreover, in designing the Community Areas it was also necessary that they comprise complete census tracts, so that census statistics could be compiled to study the characteristics and changes in the characteristics of the local communities.

"In consequence, the Community Area may be regarded as a statistical unit for the analysis of internal changes within the City of Chicago, made up of census tracts but having, in the main, a history of its own as a community, a name, and an awareness on the part of its inhabitants of some common interests. The Community Areas are in one sense, therefore, arbitrary statistical units for effecting comparability in a study of population, land use and other changes within Chicago; but most of them are also historical entities and contain persons aware of common community interests."

If there is any issue of material fact, defendants submit, it appears to be an issue of fact between Professor Hauser in 1950 and Professor Hauser in 1966.

The only statement in the record tending to support U.S. census tracts as a proper measure of "neighborhoods" for purposes of the present action is the statement of Professor Hauser in his counteraffidavit, which is at variance with the principles of the U.S. Bureau of the Census in respect of maintenance of census tracts and indeed seemingly with the concept of "community areas" developed by Professor Hauser's own university. Under these circumstances, defendants submit, this Court may properly and should rely upon the factual analysis based upon the community area concept set forth in Mr. Humphrey's affidavit -- as clearly indicating that there is no genuine issue of material fact as to the basic question whether "since 1950 substantially all of the sites selected by the Authority for regular family public housing projects have been in Negro neighborhoods and within the areas known as the Negro ghetto;" and that, as maintained by defendants in their original memorandum (pages 19-23), such allegation and similar allegations in paragraphs 12, 13, 15, 16 and 17 of plaintiffs' complaint are clearly and demonstrably untrue.

Plaintiffs' Laches

Plaintiffs respond at pages 44-49 of their memorandum to defendants' argument that plaintiffs are barred by laches. Defendants do not deem it necessary to make reply to this response, but do not wish this to be taken as indicating any change in their position on this point.

Conclusion

For the foregoing reasons defendants respectfully submit that plaintiffs' motion under Federal Rule 21 for leave to amend their complaint to add an additional party plaintiff should be denied, and that defendants' motion to dismiss the complaint or, in the alternative, for summary judgment should be granted.

Respectfully submitted,

/s/ John W. Hunt

One of the Attorneys for
Defendants

JOHN W. HUNT
38 South Dearborn Street
Chicago, Illinois 60603
346-5100

KATHRYN M. KULA
EDMUND H. SADOWSKI
55 West Cermak Road
Chicago, Illinois
225-9700

Attorneys for Defendants

RECEIVED a copy of the foregoing Reply Memorandum this 24 day of January 1967.

/s/ CRM

One of the Attorneys for
Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS and ROBERT M. FAIRFAX,

Plaintiffs

vs.

THE CHICAGO HOUSING AUTHORITY, a Corporation, and ALVIN E. ROSE, Executive Director

Defendants

CASE NO. 66C1459

SUPPLEMENTAL AFFIDAVIT OF HARRY J. SCHNEIDER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

HARRY J. SCHNEIDER, being first duly sworn, deposes and says:

(1) He is the Director of Management of the Chicago Housing Authority ("CHA"), being the same person who made an Affidavit in Support of Defendants' Motion to Dismiss the Complaint or, in the Alternative, for Summary Judgment, heretofore filed in this matter.

(2) In 1945 CHA operated two projects (in addition to Altgeld Gardens) in locations other than in substantially Negro neighborhoods where Negroes then resided, namely, Jane Addams Homes and Cabrini Homes. No statistics are available as to the exact number of Negroes then residing in either project.

(3) In 1953 CHA operated seven projects (in addition to Altgeld Gardens) in locations other than in substantially Negro neighborhoods where Negroes then resided, all as set forth in Exhibit A attached hereto and made a part hereof.

(4) Plaintiff Dorothy Gautreaux who completed her formal application for public housing in 1953, could have been housed in any of such projects had she so requested.

(5) In 1955 CHA operated eleven projects (in addition to Altgeld Gardens) in locations other than in substantially

Negro neighborhoods where Negroes then resided, all as set forth in Exhibit A attached hereto and made a part hereof.

(6) Plaintiffs Doreatha R. Crenchaw and Odell Jones, who completed their formal applications for public housing in 1955, and plaintiff Eva Rodgers, who became a CHA tenant in 1955, could have been housed in any of such projects had they so requested.

Harry J. Schneider

Subscribed and sworn to
before me this 23rd
day of January, 1967.

Notary Public

H. J. SCHNEIDER AFFIDAVIT

EXHIBIT A

PROJECT & LOCATION	NO. OF DWELLING UNITS	NO. OF NEGRO FAMILIES IN RESIDENCY (1953)	PERCENT NEGRO POPULATION IN NEIGHBORHOOD (1950 CENSUS TRACT)	NO. OF NEGRO FAMILIES IN RESIDENCY (1955)	PERCENT NEGRO POPULATION IN NEIGHBORHOOD (1950 CENSUS TRACT)
✓ Jane Addams Cabrini & Loomis	1,027	67	4.6%	186	4.6%
✓ Lathrop Homes Clybourn & Damen	925	0	0.0%	7	0.0%
✓ Trumbull Pk. Homes 105th & Oglesby	462	0	0.0%	29	0.0%
✓ Cabrini Homes Oak & Larrabee	584	228	31.1%	351	31.1% — 75.1%
c/s Racine Courts 110th & Racine	120	91	67.9%(39.7)*	94	67.9%(39.7)* completed 1954 1960 Census 83.3%
✓ Olander Homes Oakwood & Lake Pk.	150	Not completed in 1953		110	56.5%
✓ Leclaire Cts. Extn. 44th & Cicero	300	" " " "		101	0.0%
c/s Ogden Courts Ogden & Fairfield	136	12	.5%	32	.5%
c/s Harrison Courts Harrison & Sacramento	126	13	12.6%	18	12.6%
c/s Maplewood Courts Maplewood & Jackson	132	14	30.2%	28	30.2%
c/s Archer Courts 23rd & Princeton	148	50	8.5%	78	8.5%

* Community Area Statistic

H. J. SCHNEIDER AFFIDAVIT
EXHIBIT A